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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,178	10/28/2003	J. Daniel Raulerson	Med-0065	4287

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MONTE & MCGRAW, PC  
4092 SKIPPACK PIKE  
P.O. BOX 650  
SKIPPACK, PA 19474

EXAMINER

AHMED, AAMER S

ART UNIT PAPER NUMBER

3763

DATE MAILED: 11/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/695,178

Applicant(s)

RAULERSON ET AL.

Examiner

Aamer S. Ahmed

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) 29-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 34-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                                                 |                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                            | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>06/30/2006</u> . | 6) <input checked="" type="checkbox"/> Other: <u>IDS 06/29/2006</u> .                   |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ash (US 5947953 A) in view of Wilson et al (US 20020099327 A1).

Ash discloses a multiple catheter assembly, (10) comprising a first catheter (34) having a first distal end region (64) and a first proximal end region (50) joined by a first intermediate section (26); a second catheter (30) having a second distal end region (52) and a second proximal end region (54) joined by a second intermediate section (40); first and second extension tube assemblies (84, 90) having first and second distal end portions (see fig. 1) respectively associated with the first and second proximal end regions of the first and second catheters; a first connector (94) and a second connector (88) connected to the first and second extension tubes respectively; wherein the cross-sectional shapes of the first and second proximal end regions is circular, and

the cross-sectional shapes of the first and second distal end portions of the first and second extension tubes is circular (see fig. 4G); and wherein the cross-sectional shapes of the first and second intermediate sections of the first and second catheters is semicircular, (see fig. 4F) and the first and second catheters have transition sections between the circular cross-sectional shapes of the first and second proximal and distal end regions and the semicircular cross sectional shapes of the first and second intermediate sections (86 and 92); and wherein the first and second intermediate sections of the first and second catheters are splittably joined to each other (see fig. 3a).

Ash fails to explicitly disclose an initially separable hub adapted to be releasably attachable to and around the first and second proximal end regions distally of the proximal ends.

Wilson et al discloses a similar device with an initially separable hub (20) adapted to be releasably attachable to and around the first and second proximal end regions distally of the proximal ends (paragraph 39).

It would have been obvious to one having ordinary skill in the art at the time of invention by the applicant to modify the device of Ash by adding the hub of the type taught by Wilson et al, in order to attach the hub to the tubes and the patient in a flexible moveable manner.

Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ash in view of Wilson and further in view of Butler.

Ash in view of Wilson disclose the device as described above in reference to claims 34-36, but fail to disclose that the first and intermediate sections of the first and second catheters are splittably joined together by adhesive.

Butler et al discloses a similar device, in which the first and second catheters are splittably joined to each other by adhesive (col. 14 line 24).

It would have been obvious to one having ordinary skill in the art at the time of invention by applicant to modify the device of Ash et al in view of Wilson et al by including the adhesive of the type taught by Butler et al, in order to join the two catheters (col. 14 line 24).

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 34-38 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-37 of copending Application No.

10/974,267. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one having ordinary skill in the art at the

Art Unit: 3763

time of invention by the applicant to modify the device as claimed in the co-pending application by adding the longitudinally displaceable hub of the instant application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to whose telephone number is 571-272-5965. The examiner can normally be reached on Monday thru Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).




A. Ahmed

Application/Control Number: 10/695,178

Page 6

Art Unit: 3763

  
NICHOLAS D. LUCARELLI  
SUPERVISORY PATENT EXAMINER  
TECHNICAL CENTER 3763